

discretion whether he enters into contracts for such benefits in connection with the sale of HUD-owned projects.) The conditions of eligibility for a Rental Assistance Contract and its terms are specified in this subpart D.

[40 FR 31872, July 29, 1975, as amended at 45 FR 50734, July 31, 1980]

#### § 236.705 Projects eligible for benefits.

(a) Rental assistance payments may be made with respect to section 236 projects with Rental Assistance Contracts pursuant to this subpart.

(b) Rental assistance payments to owners of projects pursuant to paragraph (a) of this section will normally be made available to 20 percent of the dwelling units, except that the Secretary may:

(1) Reduce that percentage in the case of any project if he determines that such action is necessary to assure the economic viability of the project; or

(2) Increase that percentage in the case of any project if he determines: (i) That such action is necessary and feasible, after taking into account the objective of assuring, insofar as is practicable, that there is in the project a reasonable range in the income levels of tenants, or (ii) that such action is to be taken to meet the housing needs of elderly or handicapped families.

#### § 236.710 Qualified tenant.

(a) The benefits of rental assistance payments are available only to an individual or a family who is renting a dwelling unit in a project that is subject to a contract entered into under the requirements of this subpart or who is occupying such a dwelling unit as a cooperative member. To qualify for the benefits of rental assistance payments, the individual or family must satisfy the definition of Qualified Tenant found in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(b) To receive rental assistance under this subpart, the income of the individual or family must be determined to be too low to permit the individual or family to pay the approved Gross Rent with 30 percent of the individual's or family's Adjusted Monthly Income, as

defined in § 236.2 of subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499). Determination of the Adjusted Monthly Income must include the deductions required for adjusted income in 24 CFR 5.611(a) in lieu of the deductions provided in the definition of "adjusted income" in 24 CFR 236.2 (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)).

(c) For requirements concerning the disclosure and certification of Social Security Numbers, see 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. For restrictions on financial assistance to noncitizens with ineligible immigration status, see 24 CFR part 5, subpart E.

(d) The definition of "persons with disabilities" in paragraph (d) of this section replaces the terms "disabled person" and "handicapped person" used in the regulations in 24 CFR part 236, subpart A (contained in the April 1, 1995 edition of 24 CFR, parts 220 to 499; see the Savings clause at § 236.1(c)). *Person with disabilities*, as used in this part, has the same meaning as provided in 24 CFR 891.305.

[66 FR 6224, Jan. 19, 2001]

#### § 236.715 Determination of eligibility.

(a) The housing owner shall determine eligibility following procedures prescribed by the Commissioner when processing applications for admission and tenant applications for assistance. The requirements of 24 CFR part 5 govern the submission and verification of information related to citizenship and eligible immigration status for applicants, and the procedures for denial of assistance based upon a failure to establish eligible immigration status.

(b) The owner must use good faith efforts to admit tenants according to the following list, provided that the number of units authorized for a particular category would not be exceeded and provided that there is sufficient funding for the category:

(1) First: Applicants eligible for Rental Assistance Payments;

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(2) Second: Applicants eligible to pay a below market rent under section 236;

(3) Third: Applicants who can pay the Market Rent.

(c) Before admitting an applicant who can pay the Market Rent, the owner must obtain written approval from HUD if at least 10 percent of the number of units authorized under the section 236 program are already occupied by tenants paying Market Rent.

(d) Before admitting an applicant who will not receive the benefit of Rental Assistance Payments, the owner must obtain written approval from HUD if fewer than 90 percent of the number of units authorized under the Rental Assistance Payments contract are already occupied by tenants receiving such assistance.

(e) Upon written request of the owner, the Commissioner may issue a written waiver of the requirements of paragraphs (b) through (d) of this section based on a finding of sufficient justification. Each such waiver shall be supported by a statement of the pertinent facts and grounds.

(Approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[51 FR 21862, June 16, 1986, as amended at 60 FR 14833, Mar. 20, 1995; 61 FR 13624, Mar. 27, 1996]

## § 236.720 Provisions applicable to cooperative members.

(a) A member of a cooperative who obtains a certificate of eligibility shall be required, as a condition of receiving the certificate, to agree that upon a sale of his membership, any equity increment accumulated through rental assistance payments will not be made available to the member, but will be turned over to the cooperative housing owner. Funds received by a cooperative representing an equity increment accumulated through rental assistance payments shall be deposited by the cooperative in a special account to be disbursed as directed by the Secretary.

(b) The term *tenant* as used in this subpart shall include a member of a cooperative, and the term *rental payment* shall include the carrying charges under the occupancy agreement between the members of the cooperative and the cooperative housing owner.

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### § 236.725 Term of contract.

The rental assistance contract shall be limited to the term of the mortgage or 40 years from the date of the first payment made under the contract, whichever is the lesser.

### § 236.730 Maximum annual rental assistance contract amount.

The rental assistance contract shall specify the maximum amount of the rental assistance payments for the project for the rent-up period, or for any such other period of time as the Secretary may prescribe, based upon the Secretary's estimate of probable demand and tenant income, including a 10 percent contingency allowance. At the end of such period of time, and annually thereafter, appropriate adjustments, as the Secretary may prescribe, shall be made in the maximum annual rental assistance contract amount, to reflect the actual requirements of the eligible tenants and a 10 percent contingency allowance.

### § 236.735 Rental assistance payments and rental charges.

(a) *Amount of rental assistance payments.* The rental assistance contract shall provide that the payment on behalf of a Qualified Tenant shall not exceed the difference between the Gross Rent and the Total Tenant Payment.

(b) *Total tenant payment for qualified tenants who first receive rental assistance on or after May 1, 1983.* Notwithstanding § 236.55(b), the Total Tenant Payment payable for these Qualified Tenants shall be the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of Adjusted Monthly Income as defined in subpart A;

(2) 10 percent of one-twelfth of Annual Income as defined in subpart A;

(3) If the family receives Welfare Assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated. If the family's Welfare Assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph (b)(3)